



# Wireless E-911 Services Board

General Business Meeting  
September 15, 2004



## Agenda

1. Call to Order
2. Approval of Minutes
3. Financial Report
4. CMRS Status Update
5. Annual Report
6. FY2006 CMRS Funding Guidelines
7. Old Business
8. New Business
9. Adjourn

# Financial Report



Wireless E-911 Service Board June 2004 Financial Report			
Item	June	YTD	Appropriation
DPSC Expended	\$ 32,048.80	\$ 369,017.08	\$ 397,039.91
PSAP Funding	\$ 1,234,565.24	\$ 23,411,852.07	\$ 26,294,000.00
CMRS Funding	\$ 461,695.50	\$ 12,133,331.60	\$ 11,062,902.00
Fund Transfers	\$ -	\$ 3,825,000.00	\$ 3,825,000.00
Budget Reductions	\$ -	\$ 9,843,098.00	\$ 9,843,098.00
Total Expenditures	\$ 1,728,309.54	\$ 49,582,298.75	\$ 51,422,039.91
Revenue (May 2004)	\$3,177,628.35	\$33,640,484.89	
Interest		\$ 287,393.66	
Difference		\$ (15,654,420.20)	
Beginning Fund Balance		\$ 26,170,277.17	
<b>New Fund Balance</b>	<b>\$</b>	<b>10,515,856.97</b>	

# CMRS Status Summary



CMRS	Phase I	Phase II
Alltel	63	30
AT&T	7	7
Cingular	29	14
Nextel	38	27
Nextel Partners	39	22
nTelos	62	44
Sprint	58	37
T-Mobile	58	11
Triton/Suncom	81	36
U.S. Cellular	35	17
Verizon Wireless	88	48
Virginia	6	0



## FY2004 Annual Report



### Need for Legislation

- ◆ Possible VA Constitutional conflict
- ◆ Remove the exemptions to E-911 deployment
- ◆ Modify wireless surcharge definition
- ◆ Permit Board to fund other parties
- ◆ Expand the Board's responsibility with regard to the statewide E-911 network
- ◆ Adjust the timeline for true-up
- ◆ Clarify the appeals process in subsection G

## Constitutional Conflict



- ◆ Article X of the Constitution states:
  - "No money may be paid out of the Treasury except in pursuance of appropriations made by law"
  - "No debt shall be contracted by or in behalf of the Commonwealth"
  - "All revenues of the Commonwealth shall be collected by its proper officers and paid into the State Treasury"

## Constitutional Conflict



- ◆ To clarify authority of Board regarding debt issue, the following changes are proposed to:
  - 56-484.17 (C) – Modify sentence – The Board shall provide **full** payments to PSAP operators for appropriate **all** wireless E-911 PSAP costs and to CMRS providers of **all** appropriate wireless E-911 CMRS costs.
  - 56-484.17 (C) – Add sentence – In reviewing each estimate, the Board may consider factors such as other cost recovery funding sources and available appropriated funds when determining appropriate cost recovery.

## Constitutional Conflict



### ◆ Changes continued:

- 56-484.17 (D) – Modify sentence – If the Wireless E-911 Fund is insufficient during any calendar quarter to make all such qualifying payments, the Board shall prorate prioritize payments equally among all PSAP operators and CMRS providers during such calendar quarter based on their impact on the emergency telecommunications system. Unpaid amounts shall may be carried forward for payment during the next calendar quarter as deemed appropriate by the Board. Such carry-forward process shall continue until all actually incurred costs have been paid.

## Constitutional Conflict



### ◆ To clarify authority of Board regarding collection issue, the following changes are proposed to:

- 56-484.17 (D) – Modify subsection – Each CMRS provider shall collect a remit the wireless E-911 surcharge amount, minus three percent thereof for administrative expenses, for from each of its customers whose place of primary use is within the Commonwealth and shall obtain reimbursement therefore by charging each such customer the wireless E-911 surcharge. All wireless E-911 surcharges, less three percent, shall be remitted within 30 days monthly to the Board for deposit in the Fund. Each CMRS provider shall reduce collected surcharge amounts to the minimum amount necessary to defray costs of collecting the surcharges, equal to three percent of the amount collected.

## Constitutional Conflict



### ◆ Comments received on debt issue:

- "appropriate is likely to be a source of contention. Is there a stronger word short of "all"?"
- Prioritize "project" instead of payments and add "and equally fund such prioritized projects equally among all funding recipients during such calendar quarter."
- Unpaid amount carried forward "to extent funding is available and" as deemed appropriate by the Board.

## Constitutional Conflict



### ◆ Comments (continued):

- With regard to changes to 56-484.17 (C) – "Why are we making this change? Appears we are trying to close a loophole or something. Explanation needs to be forthright so board can vote knowledgeably. What problem are you trying to solve? Have anything to do with chips in sets? I don't think I can support this change without a better explanation. Original bill said "all" and the issue is what is necessary to implement."

# Constitutional Conflict



## ◆ Comments (continued):

- With regards to 56-484.17 (D) – “I do not agree with this change. If we don't have enough money, it should be prorated equally as originally intended. This is necessary to keep everyone (PSAPs and CMRS providers on the same side of what is reasonable and how high the fee should be. Start letting there be winners and losers and all hell will break loose. It is tough enough now without creating division. If there can be no carry forward process, so be it. However I suspect that we could permit everyone to include any under-recovery in their requests for the next fiscal quarter/year. Such requests could be easily audited and paid if there is sufficient money. Don't see how this causes a constitutional problem.”

# Constitutional Conflict



## ◆ Comments (continued):

- In 56-484.17 C, “I suggest replacing the word “appropriate” in the two places it appears in the first sentence with the words “all qualifying.” I note that the third sentence of subsection C provides that the Board will let the County know whether its estimate “qualifies” for payment. Consequently, I am recommending that the Board be required to provide payment for all qualifying payments in the first sentence of subsection C.”
- In 56-484.17 C, “I am also concerned with the words “and available appropriated funds” in the next to the last sentence. That language could be interpreted as meaning that, if funds are not appropriated for qualifying payments, the Board does not have to arrange for payment of such qualifying costs. To remove that possible confusion, I suggest deleting the words “and available appropriated funds” from the proposed language of subsection C.”

## Constitutional Conflict



### ◆ Comments (continued):

- In 56-484.17 (D), "I am also concerned about the deletion of the last sentence of subsection D and the replacement of the word "shall" with the word "may" in subsection D."
- "The board expansion of the Board's discretion on funding PSAP and carrier E-911 implementation costs is of great concern; its justification equally vague. Substitution of the term 'appropriate' for 'all' costs without sufficient definition of that term and its justification increases the risk of arbitrary and harmful decisions."

## Constitutional Conflict



### ◆ Comments (continued):

- "Debt carry-forward restrictions are unjustified and unfair because of costs incurred by Cingular and other carriers (as identified in the draft annual report) which the Board has to date refused to reimburse. As you know, there is disagreement on whether the statute as currently written allows such discretion as the Board has exercised."



## Constitutional Conflict



### ◆ Comments received on collection issue:

- "I do not agree with this change. When the bill was debated and passed it was a fee to be paid by the customers, not the providers – just like the local 911 fee. I think the carriers will fight (and maybe beat) it at the GA. It does not make sense to me that this constitutional problem has existed for six years and now has to be fixed right away. With the work being done on tax simplification, let's leave this alone now and make sure that bill solves the constitutional problem when it passes this year. If it doesn't pass then we have to solve the constitutional problem next year. When we go to solve it, we are going to have to work with the industry to ensure they are not harmed by this change. We will have to make sure that things like bad debt and exemptions from the surcharge are cared for in any language or they will have a legitimate issue to fight us in the session. If we feel we have to go forward this year, these things have to be worked out before the bill can pass."

## Constitutional Conflict



### ◆ Comment (continued):

- "If we leave this in it will also have to include a bad debt factor or simply exclude any monies a customer refused to pay. We will have to find a way to solve this or the industry will correctly claim that we have added to their costs by the change from a subscriber fee to a provider fee."
- "It looks like there are no exceptions on what customers pay the surcharge currently. That is, state government, federal government, local government, non-profits, etc.. Is that correct?"

## Constitutional Conflict



### ◆ Comments (continued):

- "Changing the incidence of the state surcharge from the end user to the wireless carrier is unfair and deceptive. The change unfairly shifts the burden of non-paying end users to the carrier rather than the state and disguises the true nature [of] the government surcharge. There is no clear rationale states for this change. If a pre-paid issue exists, it is neither necessary nor appropriate as a resolution. There are alternatives, if needed, and we would be more than happy to discuss."

## Constitutional Conflict



### ◆ Recommended changes:

- Consider "all appropriate wireless costs".
- Add unpaid amount carried forward "to extent funding is available" language.
- Consider unpaid amounts with next funding cycle.
- Refer collection issue to tax reform committee (or add bad debt language)
- Include an exemption for governments

## Remove Exemptions



- ◆ Removes exemptions currently not in use.
- ◆ Delete 56-484.16 (A) and (D).
- ◆ Modify 56-484.16 (B) as (A) to read:
  - B. Except as provided in subsection D, oOn or before July 1, 2003, every county, city or town in the Commonwealth shall be **operating** be served by an **wireline** E-911 system, unless an extension of time has been granted by the Board.
- ◆ Renumber (C) to (B)

## Remove Exemptions



- ◆ Comments received:
  - "The wholesale removal of the terms 'wireline' and 'wireless' are premature and confusing since the respective systems remain different in capabilities, implementation and funding. For example, in section 56-484.16 (A) what 'E-911 system' will serve counties, cities and town?"
- ◆ Recommended changes:
  - None

## Surcharge Definition



- ◆ Technical amendment to make the definition consistent with the 2003 legislation.
- ◆ Change definition to:
  - "Wireless E-911 surcharge" means a **monthly** fee equal to of \$.75 per month on each CMRS number of a customer with a place of primary use in Virginia **billed** by each CMRS provider and CMRS reseller **on each CMRS number of a customer with a place of primary use in Virginia.**"

## Surcharge Definition



- ◆ Comments received:
  - The prepaid carriers are seeking a change in the way that the fee is paid on prepaid accounts. I understand that TN is their model. Here is that language:

The service charge shall also be imposed upon customers who pay for service prospectively (prepaid customers). CMRS providers shall remit to the board the service charge under one of two methods:

- (a) The CMRS provider shall collect, on a monthly basis, the service charge from each active prepaid customer whose account balance is equal to or greater than the amount of the service charge; or
- (b) The CMRS provider shall divide the total earned prepaid wireless telephone revenue received by the CMRS provider within the monthly 911 reporting period by fifty dollars (\$50), and multiply the quotient by the service charge amount

## Surcharge Definition



- ◆ Recommended changes:
  - Consider new methodology for calculating subscriber count.

## Funding Others



- ◆ To provide the Board explicit legislative authority to fund other entities directly when more cost effective.
- ◆ Still must be a wireless PSAP or CMRS cost.
- ◆ No comments and no recommended changes

## Expanded Board Role



- ◆ To leverage current success of wireless E-911 deployment for new challenges by promoting and assisting with E-911 more broadly.
- ◆ No intent to change wireless funding or impact local E-911 funding.
- ◆ Not tied to Telecommunications Taxation reform process

## Expanded Board Role



- ◆ Rename Board to "Public Safety Communications"
- ◆ Remove "wireless" throughout except as it relates to funding process
- ◆ Continue existing Board and members
- ◆ Maintains staggered terms and quarterly meeting requirement
- ◆ Reporting requirement expanded beyond wireless
- ◆ Authorizes Board for other funding

## Expanded Board Role



### ◆ Comments received:

- "You may want to link [56-484.14 (1)] (i) to wireless E-911 to avoid any appearance that fund money would be used for wireline E-911."
- "I suggest that it would be beneficial to add two or three more PSAP Board members. I think there should be representation from the different areas of the state. I also suggest that the PSAP members come from PSAPs of varying sizes and capabilities. That way, it would be more likely that PSAP representation would be from geographically divergent PSAPs, as well as large, small, fully enhanced 911-capable, and not fully 911-capable PSAPs. If increasing the number of PSAP Board members is not feasible, then I suggest that the existing two PSAP members and the sheriff, chief of police, fire chief, and EMS manager members be representative of geographically divergent jurisdictions, as well as large, small, fully enhanced 911-capable, and not fully 911-capable jurisdictions."

## Expanded Board Role



### ◆ Comments (continued):

- "Suggest adding, "These regulations shall not in any way interfere with individual jurisdictions' ability to levy and expend their own local special taxes for wireline 9-1-1 services IAW § 58.1-3813.1 (Local Tax For Enhanced 911 Service)."
- "Suggest adding the words in red to the following sentence in this para ... "In reviewing each estimate, the Board may consider factors such as other **wireless 9-1-1** cost recovery funding sources and available appropriated funds **for wireless 9-1-1** when determining appropriate cost recovery."



## Expanded Board Role



- ◆ Comments (continued):

- "I feel the new Public Safety Communications Services Board should "promote and assist in the statewide development, deployment, and maintenance of enhanced emergency telecommunications services and technologies," as stated in § 56-484.13 (Public Safety Communications Services Board; membership; terms; compensation.). In recent years, they have become an exceptional resource for PSAPs in both the wireless and wireline arenas. I do not believe, however, that the Board should be allowed to control local jurisdictions' abilities to tax for wireline 9-1-1 services. I also do not believe the Board should be allowed to dictate how those taxes are expended. However, I would not be opposed to the Board having the ability to audit and advise local jurisdictions to ensure they are expending local wireline taxes appropriately IAW § 58.1-3813.1 (Local Tax For Enhanced 911 Service); in fact, I believe this responsibility should be incorporated into § 56-484.14 (Powers and duties of the Public Safety Communications Services Board)."

## Expanded Board Role



- ◆ Comments (continued):

- "The main concern I have is the word wireless is being deleted in as many places as possible. My main concern is that wireless customers provide 100% of the funding. If the plan is for the fund to balance support for other public safety initiatives. The Board will need to seek funding from the subscribers of these services to relieve the burden placed on wireless customers and carriers. As an example: If Voice Over IP initiatives are funded by the board with funds collected against wireless subscribers, these funds could be diverted to support competing technologies. At that point, the additional funds paid by wireless subscribers each month could be diverted to improve the safety performance of a competing technology. "



## Expanded Board Role



### ◆ Comments (continued):

- "I am trying to understand how the proposed legislation is required for you to help in such matters. Your charge from VITA is not limited to what the Wireless 9-1-1 Board legislation is. Put another way, why do you need the legislation change in order to help these PSAPs with non-wireless issues? Is it about providing funding to PSAP's for non-wireless issues that requires legislation or your ability to carry out assisting the PSAP's?"
- "I believe that a government agency should be responsible for these items in the legislation. The question is what level of Government. Regardless, it cannot be a professional organization as they are slighted to their interests for that organization and cannot be charged with seeing through with responsibilities of a PSAP, local government or even state government."
- "The legislation hints of taking away local funding and the ability for a locality to tax locally. If so, there must be justification from a local standpoint so that a local PSAP and ultimately local government can support such a decision."

## Expanded Board Role



### ◆ Comments (continued):

- "Expansion of the Board's purview broadly beyond wireless E-911 matters while the only certain funding the Board has is the Wireless E-911 Fund does not make sense. Cingular opposes such an expansion at least until wireless E-911 implementation and cost recovery is complete and protections are established to ensure that a broadening of the Board's scope will not leave wireless customers subsidizing non-wireless projects and activities through the fund."

## Expanded Board Role



- ◆ Recommended changes:
  - Clarify explicitly that regulation authority does not include any local E-911 funding sources
  - Clarify explicitly that the wireless fund is independent of the Board's expanded role

## Adjust True-up



- ◆ To reflect a more realistic schedule for completion and explicitly address underpayments
- ◆ Modify the first clause from "During the period July 1 through September 30 of each year" to "After the end of each fiscal year, on a schedule adopted by the Board,"
- ◆ Add sentence to 56-484.17(E) stating "In the event payments were less than the actual costs reported, the Board shall include the additional funding with the next quarterly payment for the then current fiscal year. "

## Adjust True-up



### ◆ Comments received:

- "This seems to be creating the same constitutional problem that existed earlier. Is the difference that in this instance the assumption is that we have the money in the fund and are thereby not creating a debt obligation?"
- "The current practice of making sure all qualified costs are paid should be continued. With that in mind, I suggest making some changes to the proposed language in subsection E. In particular, I suggest re-drafting that sentence to read "If payments were less than the actual qualifying costs reported, the Board shall include the additional funding for such qualifying costs with the next quarterly payments for the then current fiscal year."

## Adjust True-up



### ◆ Recommended change:

- Change "shall include the additional funding with the next quarterly payment" to "may include..."

## Appeals Process



- ◆ Clarify appeals language in 56-484.17 (G) to apply to the subsection not section
- ◆ Add "sub"
- ◆ No comments received
- ◆ No recommended changes

## Other changes



- ◆ Change "Director" to "CIO" in 56-484.17 (A)
- ◆ Change definition of PSAP to eliminate "intends to receive and process E-911 calls and has notified CMRS providers..."
- ◆ Change definition of ANI and ALI to eliminate the reference to wireless

## Other Comments



- ◆ Need more time to review impact of changes
- ◆ Proposed changes extends beyond legislative mandate
- ◆ Concern about Board's involvement in wireline issues

## FY2006 CMRS Guidelines



- ◆ Continuation of FY2005 with no changes

## Old Business



- ◆ FY2005 Amended Requests

- West Point

- ◆ Wireline Extension Request

- Russell County

## New Business



- ◆ Public Comment

- ◆ Adjourn Meeting

- Next meeting November 10, 2004